



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 12, 2017

Ms. Ana Vieira Ayala
Assistant General Counsel & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2017-23307

Dear Ms. Ayala:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 679609 (OGC# 176525).

The University of Texas System (the "system") received a request for information pertaining to a specified RFP. The system claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the system informs us release of this information may implicate the proprietary interests of Recurrent Energy; Strata Solar Development, LLC ("Strata"); Calpine Energy Services, LP ("Calpine"); Exelon Generation; and Hectate Energy. Accordingly, the system states, and provides documentation showing, it notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from Strata and Calpine. We have considered the submitted arguments and reviewed the submitted information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing*

Co. v. Paxton, 466 S.W.3d 831 (Tex. 2015). The system represents the information pertains to a competitive bidding situation. In addition, the system states “although one surface lease has been signed, the other final contracts that will be signed under this project have not been executed” and “the bidding and negotiating process is ongoing for the RFP at issue[.]” After review of the information at issue and consideration of the arguments, we find the system has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the governmental body may withhold the submitted information under section 552.104(a) of the Government Code.¹

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 679609

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure.